

REMARKS

Claims 1-10 and 13-18 are pending in the present application. Claims 1, 2, 13, 16, and 18 are independent claims. The Examiner's statement that claims 13-15 are allowed is acknowledged.

Claims 2-10 are objected as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 2 has been amended in independent form including all of the limitations of the base claim and any intervening claims. Claims 3 and 6-10 and amended claims 4 and 5 depend from claim 2.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph. Claim 18 has been rewritten in independent form including the limitations of the base claim and to add that the mouthpiece has a teeth-receiving portion. Support for the claim is found in the specification as filed, specifically page 4 line 14 and claims 16 and 18 as filed and no new matter is added by virtue of the amendment.

The rejection proffers that the evidence that claim 18 fails to correspond in scope with that which applicant regards as the invention can be found in the reply filed February 8, 2002. It is of importance to note that rather than being a Reply, it was the application itself that was filed on February 8, 2002 and which included claim 18. The text to which the rejection refers is also present in the specification and refers to an embodiment of the present invention. Since original claims are considered to be part of the specification, it is submitted that Applicant has stated in the application as filed the invention that is defined in claim 18. In light of the above, reconsideration of the rejection, leading to its withdrawal is respectfully requested.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Milligan (U.S. Patent No. 5,267,353). Milligan discloses a protective face guard for use in baseball and other sports and which comprises a mask piece, an impact cushioning forehead pad, an impact cushioning mouth pad, a strap, and a mouth guard. See the abstract.

Claim 1 is amended to clarify the structure of the apparatus. Specifically, claim 1 is amended to recite that the member has a teeth-receiving portion, the fixation member includes a plate and a fastener, and the fastener plate is formed for coupling with the fastener. Support for the amendment is found in the specification and figures and particularly page 4 lines 14-15, page 5 lines 11-15 and 27-29. No new matter is added by virtue of the amendments.

The rejection proffers that Milligan discloses a face guard (80) and a mouthpad (120). It is submitted that Milligan fails to disclose or suggest the apparatus as recited by amended claim 1 for at least the reasons set forth below.

First, Milligan fails to disclose or suggest that its mouthpad (120) has a teeth-receiving portion. The Examiner's attention is directed to Figure 9 of Milligan where it is illustrated that the mouthpad (120) lies outside of the individual's mouth and appears to extend from the nose of the individual to below the chin.

Second, Milligan fails to disclose or suggest that its plastic sheet (122) has a fastener. The Examiner's attention is directed to Figure 10 of Milligan where it illustrates that both the mouthpad (120) and sheet (122) lack a fastener, let alone a fastener formed for coupling with a fastener plate. At most, Milligan discloses coupling the plastic sheet (122) to the face guard (80) with clamp brackets (114) and rivets (R), as shown in Figures 9 and 11.

Third, since Milligan fails to disclose or suggest a generally rigid fixation member including a plate and a fastener, it follows that it also lacks a distinct fastener plate formed for coupling with the fastener. Milligan instead teaches distinct clamp brackets (114) that are placed over adjacent pairs of rivets R to respectively span two vertical rods 92. See, Column 8 lines 15-16.

Accordingly, there is no disclosure or suggestion in Milligan of an apparatus comprising "a member having a teeth-receiving portion formed to be positioned adjacent to a cranio facial bone of the patient, a generally rigid fixation member coupled to the member, the fixation member including a plate and a fastener, and a distinct fastener plate formed for coupling with the fastener to couple the mask to the fixation member so that the member is in a fixed position relative to the mask", as recited in amended claim 1. As such, claim 1 as amended is not anticipated and is believed to be patentable over Milligan.

It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 102(b). Entry of the amendment leading to reconsideration of the rejection of the claims and withdrawal of the rejection is respectfully requested.

Claims 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Milligan (U.S. Patent No. 5,267,353). Claim 17 is cancelled without prejudice or disclaimer of the subject matter recited therein.

Claim 16 is amended to clarify the structure of the apparatus. Specifically, claim 16 is amended to recite a generally rigid fixation member including an attachment portion, an extension extending from the attachment portion, and a plate coupled to the extension, the mask being formed to extend across the plate, and that the mouthpiece member is coupled to the attachment portion of the fixation member in order that the mouthpiece member be coupled to the thermoplastic mask. Claim 17 is amended to correct an antecedent basis issue that rose due to the amendment to claim 16. The amendments to claim 18 are discussed above. Support for the amendments is found in the specification and figures as filed and particularly page 5 lines 3-5 and 11-12, page 7 lines 25-27, and claims 16-18. No new matter is added by virtue of the amendments.

The rejection proffers that Milligan discloses in Figures 8-10 a protective face guard (80) comprising a mouthpad (120) and the face guard (80). The face guard (80) and the mouthpad (120) are coupled together with a mouth plastic sheet (122) and clamp brackets

(124). It is submitted that Milligan fails to disclose or suggest the apparatus as recited by amended claim 16 for at least the reasons set forth below.

Milligan fails to disclose or suggest that the plastic sheet (122) includes an attachment portion coupled to the mouthpad (120), an extension extending from the attachment portion, and a plate coupled to the extension, the mask being formed to extend across the plate. At most, Milligan discloses securing mouthpad (120), coated on one side with an adhesive to the plastic sheet (122). See, Column 8 lines 16-21 and Figure 11.

Accordingly, there is no disclosure or suggestion in Milligan of an assembly comprising "a thermoplastic mask, a generally rigid fixation member including an attachment portion, an extension extending from the attachment portion, and a plate coupled to the extension, the mask being formed to extend across the plate, and a mouthpiece member coupled to the attachment portion of the fixation member in order that the mouthpiece member be coupled to the thermoplastic mask", as recited in claim 16. Claim 17 depends from amended claim 16.

Regarding claim 18, the rejection proffers that Milligan discloses a mouthpad (120) coupled to the face guard (80) via adhesive to the mouth plastic sheet (122) and secured by clamp brackets (124). It is submitted that Milligan fails to disclose or suggest the apparatus as recited by amended claim 18 for at least the reasons set forth below.

Milligan fails to disclose or suggest that its mouthpad (120) has a teeth-receiving portion. The Examiner's attention is directed to Figure 9 of Milligan where it is illustrated that the mouthpad (120) lies outside of the individual's mouth and appears to extend from the nose of the individual to below the chin.

Accordingly, there is no disclosure or suggestion in Milligan of an assembly comprising "a mouthpiece member having a teeth-receiving portion, and a thermoplastic mask, wherein the mask and mouthpiece member are coupled together with an adhesive", as

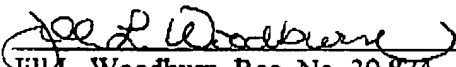
recited by amended claim 18. As such, claim 18 as amended is not anticipated and is believed to be patentable over Milligan.

It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 102(b). Entry of the amendment leading to reconsideration of the rejection of the claims and withdrawal of the rejection is respectfully requested.

The claims as submitted herein are believed to be in condition for allowance, and allowance of the application is respectfully requested. In addition, the highest number of independent claims paid for was 5. As such, no fee is believed to be due at this time. In addition, it is requested that if necessary that this paper be considered a request for an extension of time sufficient to effect a timely response.

Respectfully submitted,

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